

#### REMARKS

Applicants respectfully request reconsideration and allowance in view of the foregoing amendments and the following remarks. In this response, claims 5, 9 and 21 are amended and claim 23 is newly added. Upon entry of the Amendment, claims 1-3, 5, 7 and 9-23 will be pending in the Application. Claim 5 is amended to correct a typographical error.

#### ***Claim Rejections under 35 U.S.C. § 112***

In the Office Action, claims 9-15 and 20 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly indefinite. Regarding claims 9-15, the Examiner identified concerns with the use of the word "blocked." Applicant has amended the claims to remove potential ambiguity. Further, the language identified by the Examiner as rendering claim 20 unclear is found in claim 21 rather than claim 20. Accordingly, Applicant has amended claim 21 to better set forth certain aspects of the claimed invention. In view of these amendments, Applicant respectfully requests withdrawal of the §112 rejections.

#### ***Claim Rejections under 35 U.S.C. § 103***

In the Office Action, claims 1-3, 5, 7, 16 and 19 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 5,933,813 to Teicher et al ("Teicher") in view of U.S. Patent Publication 2001/0049690 to McConnell et al ("McConnell").

The combination of Teicher and McConnell does not teach or suggest all of the elements of the claims. For example, Teicher not McConnell separately and in combination do not teach the required receiving a response to the alert indicative of conditions of the identified item on shelf space in the identified store. Nor would motivation to combine McConnell with Teicher have existed. Teicher is directed to methods for promoting sales by changing pricing in response to sales volume and McConnell is directed to methods for identifying variations in sales volumes at a macro level. In particular, McConnell is directed to statistical modeling of movement of inventory and notification of a store manager and McConnell does not teach receiving a response to an alert indicative of conditions of an identified item on the shelf. See McConnell at paragraphs [0082]-[0084]. Therefore, McConnell does not cure the deficiencies of Teicher.

In another example, the combination of Teicher and McConnell does not render obvious "warnings of out of stock conditions." McConnell explicitly teaches that location of

inventory cannot be determined. In McConnell slowly moving items "could be on a different shelf, which could be either a sales shelf or an incorrect shelf altogether, or they could be all in the store room or on a cart someplace where they are not in a condition for a consumer to purchase the item." McConnell, paragraph [0084]. Thus, McConnell does not even consider knowing the stocking condition of warehouse, shelves or carts in a store. Again, Teicher does not cure the deficiencies McConnell and no motivation could have existed to combine the Teicher and McConnell references when McConnell expressly states that it is not knowable whether an out-of-stock condition exists or the stock is located elsewhere in the store.

Furthermore, the Examiner rejects claim 5 because "it is notoriously old and well known in the art to poll data as recited." Applicant observes that "polling data" is not recited in any claim of the present Application. Instead, claim 5 recites receiving data blocks from the data collection device when a selected number of data blocks are available, and receiving any remaining data blocks from the data collection device at the conclusion of the reporting period. For at least the reason that no valid grounds for rejection have been provided, the rejection of claim 5 should be withdrawn.

Claims 9-12 stand rejected as allegedly unpatentable over Teicher and McConnell in view of U.S. Patent Publication No. 20020109593 to Swartzel et al. However, Swartzel does not support the rejection as proposed by the Examiner. In particular, Swartzel is entirely silent on determining whether an identified item has been blocked. The paragraph cited in support of the Examiner's proposition is reproduced below for convenience.

Check signals may be managed such that the system prevents redundant or repeated signals from being sent to a given recipient. Further, a prioritization scheme may be implemented such that if multiple check signals are pending, they are prioritized based on a configurable criteria. One example of this may be to sort pending requests by manufacturer. If a given manufacturer is deemed "preferential" as a result of a business relationship or via a paid subscription, that manufacturers out of stock conditions (as one example) be sent before other restocking signals are issued. Other examples would be to sort pending out-of-stock signals based on profit margin or "sale item" status.

Swartzel at paragraph [0106]. Thus, the rejection is ill-founded and should be withdrawn.

Therefore, for at least these reasons, Applicant requests withdrawal of all rejections.

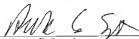
CONCLUSION

All objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition of allowance and a Notice to that effect is earnestly solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is requested to contact the undersigned at the telephone number listed below.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PTTMAN LLP



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Anthony G. Smyth  
Reg. No. 55,636  
Tel. No. 650 233.4802  
Fax No.

Date: August 14, 2006  
2475 Hanover Street  
Palo Alto, CA 94304-1114  
(650) 233-4500